

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LUZ DEL ROSARIO,

Plaintiff,

– *against* –

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

OPINION & ORDER

20 Civ. 6796 (ER) (GRJ)

RAMOS, D.J.:

Luz Del Rosario brought this action to seek review of the final decision of the Commissioner of Social Security, denying her Social Security Disability (“SSDI”) and Supplemental Security Income (“SSI”) benefits under the Social Security Act. Before the Court is a Report and Recommendation (“Report” or “R&R”) from the Honorable Gary R. Jones, United States Magistrate Judge. *See* Doc. 28. For the reasons stated herein, the Court adopts Judge Jones’ recommendation to grant Del Rosario’s motion, deny the Commissioner’s cross-motion, and remand the case for further proceedings.

I. BACKGROUND

Del Rosario first filed applications for SSDI and SSI benefits on September 2, 2016, alleging that she was entitled to benefits on the basis of her hypertension, diabetes, arthritis, asthma, bipolar disorder, and depression. Doc. 14 at 19, 95, 96, 408. Following an initial denial, she requested a hearing before administrative law judge (“ALJ”) David Suna, which was held on December 19, 2018. *Id.* at 34–68. A subsequent hearing was held on May 20, 2019. *Id.* at 69–94. The ALJ issued an adverse decision on June 12, 2019, finding that Del Rosario was not disabled under the meaning of the Social Security Act. *Id.* at 13–33. Del Rosario then appealed

the determination to the Social Security Administration's Appeals Council, which denied her request for a review on June 29, 2020. *Id.* at 1–8.

Del Rosario filed this action on August 24, 2020, which the Court ultimately referred to Judge Jones. Doc. 1. The parties cross-moved for judgment on the pleadings on June 1, 2021 and November 10, 2021. Docs. 19, 25.

Judge Jones issued an R&R on January 18, 2022, recommending that Del Rosario's motion be granted and that the action be remanded. Doc. 28.¹ The Report included notice to the parties that any objections must be filed within fourteen days. *Id.* at 23. No objections have been filed. The parties have therefore waived their right to object to the Report. *See Dow Jones & Co., Inc. v. Real-Time Analysis & News, Ltd.*, No. 14 Civ. 131 (JMF), 2014 WL 5002092, at *1 (S.D.N.Y. Oct. 7, 2014) (citing *Frank v. Johnson*, 968 F.2d 298, 300 (2d Cir. 1992); *Caidor v. Onondaga Cty*, 517 F.3d 601, 604 (2d Cir. 2008)).

II. LEGAL STANDARD

A district court reviewing a magistrate judge's report and recommendation "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Parties may raise "specific," "written" objections to the report and recommendation "[w]ithin fourteen days after being served with a copy." *Id.*; Fed. R. Civ. P. 72(b)(2). A district court reviews *de novo* those portions of the report and recommendation to which timely and specific objections are made. 28 U.S.C. § 636(b)(1)(C); *see also United States v. Male Juvenile (95 Cr 1074)*, 121 F.3d 34, 38 (2d Cir. 1997). The district court may adopt those parts of the report and recommendation to which no party has

¹ The Report based this determination on the ALJ's (1) failure to address Del Rosario's inability to maintain a regular schedule in light of the medical opinion evidence; and (2) failure to address Del Rosario's examining physician's conclusions regarding her ability to interact with others, appropriately deal with stress, and maintain a regular schedule. Doc. 28 at 11–12, 18–19, 21.

timely objected, provided no clear error is apparent from the face of the record. *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008).

III. DISCUSSION

No party has objected to the R&R. The Court has reviewed Judge Jones' thorough and well-reasoned Report and finds no error, clear or otherwise.

IV. CONCLUSION

The Court therefore adopts Judge Jones' Report in full, for the reasons stated in the Report. Accordingly, Del Rosario's motion for judgment on the pleadings is GRANTED and the Commissioner's cross-motion is DENIED, and the case shall be remanded for further proceedings consistent with the Report. In addition, the parties' failure to file written objections precludes appellate review of this decision. *PSG Poker, LLC v. DeRosa-Grund*, No. 06 Civ. 1104 (DLC), 2008 WL 3852051, at *3 (S.D.N.Y. Aug. 15, 2008) (citing *Male Juvenile*, 121 F.3d at 38).

The Clerk of Court is respectfully directed to terminate the motions, Docs. 19 and 25, and to close this case and enter judgment consistent with this Order.

It is SO ORDERED.

Dated: March 11, 2022
New York, New York



EDGARDO RAMOS, U.S.D.J.